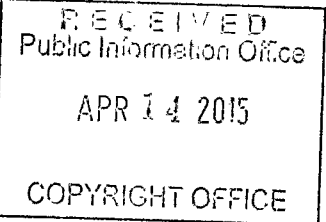


Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Library of Congress
Washington, D.C.



In re

**DETERMINATION OF ROYALTY
RATES AND TERMS FOR
EPHEMERAL RECORDING AND
DIGITAL PERFORMANCE OF SOUND
RECORDINGS (*WEB IV*)**

**DOCKET NO. 14-CRB-0001-WR
(2016-2020)**

**THE NATIONAL ASSOCIATION OF BROADCASTERS'
WITNESS LIST**

Pursuant to the Copyright Royalty Judges' April 9, 2015 Order Regarding Hearing and Prehearing Schedule, the National Association of Broadcasters hereby submits its witness list for the unified hearing. Witnesses are listed in the expected order of presentation. This order may be subject to change depending on the availability of witnesses. Witnesses will testify about the subject matter of their Written Direct Testimony and Written Rebuttal Testimony, as applicable, including the subject matters identified below. In addition, witnesses may respond to written rebuttal statements by other parties' witnesses addressing subjects that the testifying witness addressed in his or her direct or rebuttal statement.

In addition to the witnesses listed below, NAB is co-sponsoring witnesses John R. Hauser, Ph.D and David B. Pakman with iHeartMedia, Inc. Witness testimony information and estimated length of direct examination for these two witnesses are contained in iHeartMedia, Inc.'s Witness List.

1. **John Dimick**

Lincoln Financial Media
3340 Peachtree Road NE – Suite 1430¹
Atlanta, GA 30326

Estimated Length of Direct Examination: 45 Minutes

John Dimick is the Senior Vice-President of Programming and Operations at Lincoln Financial Media Company, which operates radio stations in the Atlanta, Miami/Ft. Lauderdale, Denver, and San Diego markets. Mr. Dimick will describe the economics of Internet simulcasts of LFMC's over-the-air radio broadcasts, including that, while LFMC has been attempting to make streaming of its music-formatted stations profitable for many years, streaming is not now profitable and it never has been. Mr. Dimick will also testify how over-the-air radio and simulcast streams provide enormous promotional value to labels and artists. Last, Mr. Dimick will testify that simulcasting is distinct from other webcasting and lacks the customization that SoundExchange relies upon to support its fee proposal.

2. **Michael L. Katz, Ph.D.**

Haas School of Business
University of California, Berkeley
Berkeley, CA 94720

Estimated Length of Direct Examination: 90 Minutes

Michael L. Katz holds the Sarin Chair in Strategy and Leadership at the University of California at Berkeley. He specializes in the economics of industrial organizations, which includes the study of competition and pricing, as well as antitrust and regulatory policy. Dr. Katz will testify regarding the detailed economic analysis he conducted of critical issues in the current proceeding. Dr. Katz will address economic issues central to this case, including: (i) economic principles that should guide application of the willing-buyer/willing-seller standard, (ii) the characteristics of effectively competitive prices and how they promote consumer welfare and economic efficiency, and (iii) characteristics of effectively competitive markets.

Dr. Katz will testify that the rates adopted in Web II were based on a severely flawed interactive services benchmark analysis that led to rates well in excess of those that would have been negotiated by a willing buyer and willing seller in an effectively competitive market. Dr. Katz will also testify that the negotiated license fees in the NAB/SoundExchange Agreement under the Webcaster Settlement Act do not reflect rates that would exist in an effectively competitive market and are also not a valid benchmark. He will offer boundary limits for statutory rates for simulcasting based on the record companies' extensive efforts to promote radio airplay and his analysis of the Judges' decision in the SDARSII case.

¹ Contact information is provided pursuant to the Judges' February 19, 2014 Scheduling Order. Any communications with witnesses listed herein should be made through Wiley Rein LLP.

Dr. Katz also will testify regarding his review of Dr. Rubinfeld's interactive service benchmark analysis. He will testify that, with the most quantifiable flaws corrected, an interactive services analysis would conservatively lead to a per-performance rate on the order of \$0.0005, as proposed by NAB, not the \$0.0025 - \$0.0029 that SoundExchange now seeks. Dr. Katz will also discuss numerous other flaws in Dr. Rubinfeld's benchmark calculation, each of which creates significant upward bias and all of which together result in an indefensibly high per-performance rate. Dr. Katz will also discuss the flaws in SoundExchange's proposal for a "greater of" royalty structure and will demonstrate why a percentage of revenue fee would be distortionary and contrary to the statutory goal of having license fees reflect relative contributions to value.

3. Robert Francis Kocak (Buzz Knight)

Greater Media, Inc.
35 Braintree Hill Park, Suite 300
Braintree, MA 02184

Estimated Length of Direct Examination: 30 Minutes

Robert Francis Kocak, who is known professionally as Buzz Knight, is the Vice President of Program Development at Greater Media, Inc., which operates radio stations in the Boston, Charlotte, Detroit, and New Jersey markets. Mr. Kocak will testify regarding how most successful radio stations, including most music-formatted stations, owe their success principally to elements other than music. Mr. Kocak will also testify regarding his interaction with record labels and their efforts to promote their artists and recordings.

4. Steven W. Newberry

Commonwealth Broadcasting Corporation
113 West Public Square # 400
Glasgow, KY 42141

Estimated Length of Direct Examination: 15 Minutes

Mr. Newberry is the President and Chief Executive Officer of Commonwealth Broadcasting Corporation, which is a twenty-station radio group located in Kentucky. Mr. Newberry will testify that local radio serves the community of which it is a part and is not just a music service. Mr. Newberry will also discuss the 2009 negotiations between the NAB and SoundExchange under the Webcaster Settlement Act, in which he led the NAB negotiating team, and the various factors that influenced the WSA agreements.

5. Johnny Chiang

Cox Media Group Houston
1990 Post Oak Blvd. #2300
Houston, TX 77056

Estimated Length of Direct Examination: 15 Minutes

Johnny Chiang, Program Director for the radio stations in the Cox Media Group in Houston, will testify regarding the significant effort expended by record labels to ensure airplay

and artist exposure and his experience with record label promoters and independent music promoters.

6. Ben Downs

Bryan Broadcasting Corporation
2700 Rudder Fwy. Suite 5000
College Station, TX 77845

Estimated Length of Direct Examination: 15 Minutes

Ben Downs is Vice President and General Manager of Bryan Broadcasting Corporation, which owns and operates nine radio stations located in and around College Station, Texas. Mr. Downs, who has over 45 years of experience as a broadcaster and has been managing these stations for nearly 25 years, will testify regarding his company's inability to make streaming a viable business operation, including the revenue and expenses associated with streaming. Mr. Downs will also describe how the success of his music-formatted radio stations is largely driven by non-music related factors. He will also explain how his stations support artists, who value the added exposure they get from airtime on his stations.

7. Julie Koehn

Lenawee Broadcasting Company
P.O. Box 687
Adrian, MI 49221

Estimated Length of Direct Examination: 15 Minutes

Julie Koehn is President and General Manager of Lenawee Broadcasting Company, the licensee of WLEN Radio, in Adrian, Michigan. Ms. Koehn will testify regarding why radio broadcasters and the programming they transmit are so important to the communities they serve. Ms. Koehn will also testify that Lenawee Broadcasting made a conscious decision not to stream music on the Internet because it believes that the current rate structure for SoundExchange royalties could result in unpredictable financial losses to the company.

8. Jean-Francois Gadhoury

Triton Digital
1440 Ste-Catherine W., Suite 1200
Montréal, Québec, Canada H3G 1R8

Estimated Length of Direct Examination: 15 Minutes

Jean-Francois Gadhoury is the Chief Technology Officer of Triton Digital, which provides streaming-related technology services to many leading radio broadcasters. Mr. Gadoury's testimony will describe how certain situations can lead to overcounting of sound recording performances over a stream.

9. **Dominique M. Hanssens, Ph.D.**
UCLA Anderson School of Management
110 Westwood Plaza, Suite B417
Los Angeles, California 90095-1481

Estimated Length of Direct Examination: 30 Minutes

Dominique M. Hanssens is the Bud Knapp Distinguished Professor of Marketing at the University of California at Los Angeles Anderson School of Management. Dr. Hanssens will testify regarding a consumer survey he conducted to determine the relative value assigned to music and other programming elements by listeners to Internet simulcasts of AM/FM music-formatted stations. Dr. Hanssens will present the survey methodology and results, which found that approximately 43% of total value on music-formatted stations was attributed by listeners to features other than music, such as news/talk/sports updates, contests, and morning talk.

10. **Steven R. Peterson, Ph.D. (co-sponsored with Pandora Media, Inc.)**
Compass Lexecon
200 State Street
9th Floor
Boston, MA 02109

Estimated Length of Direct Examination: 75 Minutes

Steven R. Peterson is an Executive Vice President at Compass Lexecon. Dr. Peterson will testify regarding several issues, including rebutting the claims of SoundExchange's expert Dr. Blackburn that webcasting is a healthy market with numerous entrants and that it is therefore unlikely that the current statutory rates are "choking off" growth. Dr. Peterson's testimony will show that when properly analyzed, the data show that webcasters paying the full commercial rates fail at a much higher rate than other webcasters. Dr. Peterson will also rebut Dr. Blackburn's claim that statutory services do not promote sales of sound recordings.

Dr. Peterson will also respond to the survey presented by SoundExchange expert Dr. McFadden, and the use of that survey's results by SoundExchange expert Dr. Rubinfeld. Dr. Peterson will testify that the McFadden results show a low willingness to pay for streaming, contrary to SoundExchange's claim that consumers would migrate to high-cost interactive services if statutory services were unavailable. Dr. Peterson will discuss that the average willingness to pay for certain features reported by Dr. McFadden both masks divergent preferences and cannot be used to provide insight into market prices or how consumers will respond to market prices. Dr. Peterson also will explain why Dr. Rubinfeld's "interactivity adjustment," is not supported by the McFadden survey data.

11. Roman Weil, Ph.D.

Booth School of Business
University of Chicago
5807 S. Woodlawn Avenue
Chicago IL 60637

Estimated Length of Direct Examination: 30 Minutes

Roman Weil is a Certified Public Accountant and the V. Duane Roth Professor Emeritus of Accounting at the Booth School of Business at the University of Chicago. Dr. Weil's testimony will address the difficult allocation issues, burdens, and controversies that would arise if radio simulcasters were required to pay sound recording royalties under a fee structure that included a percentage of revenue component. Dr. Weil also will address the reason that some of SoundExchange's other proposed changes to rates and terms should not be adopted, including removing the current requirement that a CPA conduct any audits, which could compromise the integrity of the audit process.

Respectfully submitted,

/s/ Michael L. Sturm

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*Counsel for the National Association of
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Dated: April 14, 2015

CERTIFICATE OF SERVICE

I hereby certify that on April 14, 2015, I caused copies of the foregoing document to be served via email on the following parties, which have consented to email service:

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/s/ Wesley E. Weeks
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